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UNCLAS SECTION 01 OF 03 PANAMA 002232

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E.O. 12958:N/A

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SUBJECT: STATE COMMISSION FOR JUSTICE REFORMS FINAL REPORT

Summary

1. (SBU) On September 28, the State Commission for Justice Reform submitted to President Torrijos recommendations for in-depth changes to Panama's administration of justice (AOJ). Many of the report's suggested reforms will require constitutional changes. The report attempts to address glaring shortcomings in Panama's penal code, local courts, alternative dispute resolution, and family and probate law. Most importantly, the report proposes a new, more consultative method to choose magistrates to Panama's highly discredited Supreme Court. President Torrijos formed the commission last Spring as a way to avoid making a politically awkward decision about judicial reform. His reaction will show how sincere he is about finding short, medium, and long-term fixes to a problem that is sapping legitimacy from Panama's political system. End summary.

The "Commission"

2. (U) Reacting to mutual corruption allegations among three Supreme Court Justices followed by demands from civil society for the immediate removal of all nine Justices, President Torrijos decided to form a commission to study the problem in early March. The resulting State Commission for Justice Reform was tasked with making recommendations for in-depth reforms to the AOJ. The Commission included some big names: Jerry Wilson (Legislative President), Jose Troyano (Supreme Court Chief Justice), Ana Matilde Gomez (Attorney General), Oscar Ceville (Solicitor General), Juan A. Tejada (Ombudsman), Olga Golcher (Vice Minister of Government and Justice), Carlos Vasquez (National Bar Association President), and Magally Castillo (Pro-Justice Alliance Executive Director). It arguably represents Panama's first serious attempt in its history to begin to correct an AOJ system widely seen as dangerously broken.

Access to justice

3. (U) The report recommends replacing the notoriously uneducated, politically motivated "corregidores" and "night courts" with professionally trained Justices of Peace. The report also would:

- make public defenders' salaries independent of the central judicial budget and to push alternative dispute resolution to decrease court workload;
- encourage pro-bono legal work by law firms;
- ask the National Bar Association to provide legal counseling to support public defenders;
- improve legal instruments to protect "vulnerable groups" such as women, children and indigenous people, especially in domestic violence and abuse cases;
- establish a Constitutional Court comprising three Supreme Court Justices to decrease the Court's workload and expedite constitutional cases.

Comprehensive reform to penal jurisdiction

4. (U) The report strongly recommends completely new policies to prevent and repress criminal behavior, such as Penal Code changes to speed administration of justice, amendments to the Procedural Code to separate civil and penal processes, and general updates to penal law. The report highly recommends amendments to the Judicial Technical Police law (PTJ). (Note: the current PTJ law is confusing. The PTJ --equivalent to the U.S. FBI-- Director General is appointed by the Chief Justice and can only be removed by the Supreme Court, yet his/her immediate supervisor is the Attorney General, who is not a member of the Judicial Branch, but of the Public Ministry, which works separately from the Judiciary. End note.)

Structural reforms of the AOJ system: new system to appoint

Supreme Court Justices

15. (U) The proposals include:

- Re-designing the judicial disciplinary system for the Attorney General, Solicitor General, and all judges and prosecutors to prevent undue influence by superior judges on rulings and/or personnel;
- Implementing a new system for appointing Supreme Court Justices that would include a Special Commission to pre-select candidates for Supreme Court Justice, Attorney General and Solicitor General. The Special Commission (including non-governmental legal experts) would meet when vacancies occur. After screening the candidates (anyone could apply), the Commission would send the President at least 10 and no more than 15 names for each position open;
- Implementing a civil service career with a scientific personnel evaluation system at the Public Ministry to recruit highly-qualified human resources to provide job stability;
- Updating judicial training;
- Creating new courts and prosecutors' offices throughout the country;
- Implementing updated managerial and financial systems at the Judicial Branch and the Public Ministry to guarantee administrative and financial autonomy for expedited justice;

Accountability of and transparency by AOJ officers

16. (U) The report recommends allowing public access to information judicial performance.

It recommends:

- Regular judicial and public ministry audits and an immediate national inventory of pending cases;
- Fewer constraints in Public Ministry investigations;
- More funds for Anti-Corruption prosecutors and for training and workshops on corruption and ethics.

Jurisdictional reforms

17. (U) Procedural and jurisdictional reforms for expedited justice recommended are:

- Updates of commercial courts enforcing respect for consumers' rights;
- Modifications to the Family, Children and Youth Courts' jurisdiction to enforce protection of victims;
- Re-drafting of poorly-defined norms in the labor legal system;
- Creating an audit department for the two existing maritime courts in the country.

Constitutional reforms

18. (U) The Commission's most important and in-depth recommendations will require constitutional changes, such as:

- To establish a Judicature Council to exclusively handle all administrative affairs of the Judicial Branch (e.g. human resources issues, salary scales, promotions, disciplinary actions, etc.);
- To define a new appointment system for Supreme Court Justices (see para 5);
- To amend the AOJ budget so that it is not subject to cuts by other government branches;
- To clarify the Attorney General and the Solicitor General's duties to avoid duplications;
- To re-define the systems for monthly transfers of appropriations by the Executive branch to Judicial branch accounts on time to avoid current delays;
- To make more transparent impeachment process against Supreme Court Magistrates by the National Assembly;
- To establish a Constitutional Tribunal, separate from the current Supreme Justice, that would exclusively see

constitutional cases, which usually require immediate attention.

Civil Society's reactions to the Commission's report

9. (SBU) Despite President Torrijos's public commitments that he would study the report thoroughly and would take into serious consideration its recommendations, public reaction about the report's implementation and/or efficacy ranged from skeptical to hopeful. The Ecumenical Committee of Panama publicly warned President Torrijos that it would be a "mockery to Panamanian society" if he does not make the recommended changes. Well-known Catholic priest Nestor Jaen was more optimistic about the GOP's good will, but warned about the immediate need for changing the appointment system for Supreme Court Justices, as two vacancies will open soon. Former National Bar Association President Jose Alvarez stated that only in-depth constitutional reforms would bring about positive change, and the Pro-Justice Alliance published an announcement in local dailies informing society that it would monitor Torrijos implementing the reforms or not.

Comment

10. (SBU) The Commission did a thorough job in its 161-page report, which includes technical and political reforms that, for the better, if carried out, would totally transform of the AOJ system in Panama. However, significant financing is necessary to enact many of the suggested reforms. When the Family Code was passed in 1995, the GOP estimated that at least 80 family courts were needed. Ten years later, only 20 family courts have been opened due to lack of resources.

11. (SBU) Many of the reforms require political decisions by President Torrijos. With civil society demanding immediate changes to the system for appointing justices, which would cost little, Torrijos could be in a position to accept them. Many expect that he will. However, constitutional changes recommended by the Commission, which are legally not easy to do, would allow for some financial independence of the Judicial Branch. It remains to be seen if a powerful presidential branch is willing to lose control over the judicial budget when traditionally, the Executive branch unilaterally reduces the AOJ budget even before submitting it to the National Assembly where further cuts are made. In the month that has passed since the report was submitted, there has been no news on GOP action. With sensitive Social Security reforms currently under discussion possible to be submitted to the National Assembly in December 2005 the timing may not be the best for Torrijos to implement most of the recommended reforms as his attention would be focused on controversial CSS changes.

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